

MONTANA LEGISLATIVE HISTORY

Chapter 124 19 95

Bill H 460 S _____ Original bill & history X c

H. Committee on JUDICIARY

Hearing Date(s) 1/3 X c

TABLED 1/10 X c

PASSED 1/24 X c

_____ c

Date Out _____ c

S. Committee on JUDICIARY

Hearing Date(s) 5/1 X c

EXEC. ACTION _____ c

_____ c

_____ c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

HB 43 INTRODUCED BY TASH

AUTHORIZE A BUDGET AMENDMENT FOR REVENUE RESULTING FROM SALE OF GOODS PRODUCED OR MANUFACTURED BY THE INDUSTRIES PROGRAM OF AN INSTITUTION WITHIN DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

12/22	INTRODUCED		
1/02	FIRST READING		
1/02	REFERRED TO APPROPRIATIONS		
1/10	HEARING		
1/11	COMMITTEE REPORT—BILL PASSED		
1/12	2ND READING PASSED	70	26
1/13	3RD READING PASSED	75	23

	TRANSMITTED TO SENATE		
1/16	FIRST READING		
1/16	REFERRED TO FINANCE & CLAIMS		
1/24	HEARING		
1/30	COMMITTEE REPORT—BILL CONCURRED		
1/31	2ND READING CONCURRED	45	0
2/01	3RD READING CONCURRED	50	0

RETURNED TO HOUSE
SIGNED BY SPEAKER
2/06 SIGNED BY PRESIDENT
2/06 TRANSMITTED TO GOVERNOR
2/08 SIGNED BY GOVERNOR
CHAPTER NUMBER 36
EFFECTIVE DATE: 02/08/95

HB 44 INTRODUCED BY QUILICI

DEFINE "QUALIFIED ENERGY PROJECTS" FOR SCHOOL DISTRICTS
BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

12/23	INTRODUCED		
1/02	FIRST READING		
1/02	REFERRED TO EDUCATION & CULTURAL RESOURCES		
1/06	HEARING		
1/16	COMMITTEE REPORT—BILL PASSED		
1/17	2ND READING PASSED	96	0
1/18	3RD READING PASSED	96	0

	TRANSMITTED TO SENATE		
1/19	FIRST READING		
1/19	REFERRED TO EDUCATION & CULTURAL RESOURCES		
1/30	HEARING		
1/31	COMMITTEE REPORT—BILL CONCURRED		
2/01	2ND READING CONCURRED	50	0
2/02	3RD READING CONCURRED	48	0

RETURNED TO HOUSE
2/04 SIGNED BY SPEAKER
2/06 SIGNED BY PRESIDENT
2/06 TRANSMITTED TO GOVERNOR
2/08 SIGNED BY GOVERNOR
CHAPTER NUMBER 37
EFFECTIVE DATE: 07/01/95

HB 45 INTRODUCED BY GALVIN

PROVIDE THAT BEGINNING WITH THE 2005 REGULAR LEGISLATIVE SESSION, THE LEGISLATURE WILL HAVE AN 80-MEMBER HOUSE OF REPRESENTATIVES AND A 40-MEMBER SENATE

12/27	INTRODUCED		
12/29	FISCAL NOTE REQUESTED		
1/02	FIRST READING		
1/02	REFERRED TO STATE ADMINISTRATION		
1/04	FISCAL NOTE RECEIVED		
1/04	FISCAL NOTE PRINTED		
1/06	HEARING		
2/01	TABLED IN COMMITTEE		
2/23	MISSED TRANSMITTAL DEADLINE		
	DIED IN COMMITTEE		

HB 46 INTRODUCED BY SIMON

EXPAND CRIME OF ARSON TO INCLUDE PROPERTY NOT CURRENTLY INCLUDED AND TO INCLUDE DAMAGE OR DESTRUCTION OF ONE'S OWN PROPERTY TO OBTAIN A PECUNIARY OR OTHER GAIN THROUGH FRAUD OR DECEPTION

12/27	INTRODUCED		
12/29	FISCAL NOTE REQUESTED		
1/02	FIRST READING		
1/02	REFERRED TO JUDICIARY		
1/03	HEARING		
1/06	FISCAL NOTE RECEIVED		
1/07	FISCAL NOTE PRINTED		
1/09	TABLED IN COMMITTEE		
1/25	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/27	2ND READING PASSED	54	44
1/28	3RD READING FAILED	48	49
1/30	RECONSIDERED PREVIOUS ACTION	50	49
1/31	3RD READING PASSED	51	46

	TRANSMITTED TO SENATE		
2/01	FIRST READING		
2/01	REFERRED TO JUDICIARY		
3/01	HEARING		
3/03	COMMITTEE REPORT—BILL CONCURRED		
3/04	2ND READING CONCURRED	43	0
3/06	3RD READING CONCURRED	49	0

RETURNED TO HOUSE
3/07 SIGNED BY SPEAKER
3/09 SIGNED BY PRESIDENT
3/09 TRANSMITTED TO GOVERNOR
3/13 SIGNED BY GOVERNOR
CHAPTER NUMBER 124
EFFECTIVE DATE: 10/01/95

HB 47 INTRODUCED BY LARSON

GENERALLY REVISE LAWS RELATING TO BOARD OF PERSONNEL APPEALS

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

12/27	INTRODUCED		
12/29	FISCAL NOTE REQUESTED		
1/02	FIRST READING		
1/02	REFERRED TO BUSINESS & LABOR		
1/06	HEARING		
1/06	COMMITTEE REPORT—BILL PASSED		

HOUSE BILL NO. 46

INTRODUCED BY SIMON

A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE CRIME OF ARSON TO INCLUDE ALL PROPERTY AND THE DAMAGE OR DESTRUCTION OF ONE'S OWN PROPERTY TO OBTAIN A PECUNIARY OR OTHER GAIN THROUGH FRAUD OR DECEPTION; AND AMENDING SECTION 45-6-103, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-6-103, MCA, is amended to read:

"45-6-103. Arson. (1) A person commits the offense of arson when, by means of fire or explosives, ~~he~~ the person knowingly or purposely:

(a) damages or destroys an occupied a structure, vehicle, crop, pasture, forest, or other property which that is property of another without consent; or

(b) damages or destroys a structure, vehicle, crop, pasture, forest, or other property that the person owns or has a possessory interest in, with the purpose of obtaining a pecuniary or other gain through fraud or deception; or

~~(b)~~ (c) places another person in danger of death or bodily injury, including a firefighter responding to or at the scene of a fire or explosion.

(2) A person convicted of the offense of arson shall be imprisoned in the state prison for ~~any~~ a term not to exceed 20 years or be fined an amount not to exceed \$50,000, or both."

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0046, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act expanding the crime of arson to include all property and the damage or destruction of one's own property to obtain a pecuniary or other gain through fraud or deception.

FISCAL IMPACT:

passage of HB0046 would have an immaterial fiscal impact on state government.

 1-5-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


BRUCE SIMON, PRIMARY SPONSOR DATE

Fiscal Note for HB0046, as introduced

HB 46

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on January 3, 1995, at
8:10 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: None

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 46, HB 26 AND HB 41
Executive Action: None

CHAIRMAN BOB CLARK opened with a welcome and a reminder to visitors who are to testify on bills to please print names on the registry.

HEARING ON HB 46

Opening Statement by Sponsor:

REP. BRUCE T. SIMON, House District 18, Billings, brought before the committee HB 46 which is a bill to make some changes in the arson statutes. He stated that he was surprised to find out that if he were to go into the parking lot and pour gasoline on a car and set it on fire, he would not be committing the act of arson. Most assume automatically that if you set fire to someone else's property, it would be the act of arson, but that is not the case.

Proponents' Testimony:

Lonnie Larson, Deputy Fire Marshall, City of Billings, is currently involved with the arson task formed throughout the county. He gave a brief history of fires in that county. He cited statistics on the number of fires responded to including occupied structures which the current language addresses as well as car fires, grass fires and trash fires. He addressed the last three categories which are not classified as occupied structures by current language. In 1993, there were 97 vehicle fires and of those 10% were found to be intentionally set fires. He further cited specific examples of incendiary fire incidents which resulted in difficulty to bring prosecution for arson because of the wording of the present law.

Paul Gerber, Fire Marshall of Billings, also gave testimony in support of this House Bill. He cited statistics concerning fires responded to by the Billings Fire Department and 25% were listed as either incendiary or suspicious. For the past several years over 1/3 of dollar loss is attributed to incendiary or suspicious fires in Billings. In many cases, the investigators know who started the fires, but they are difficult to prosecute; many being built upon circumstantial evidence. The crime takes more out of communities financially than any other crime through various types of monetary losses as well as loss of life and injuries. The current Montana law presents obstacles to the effective prosecution of arson. He proceeded to point out the specific changes in the current law as noted on the bill at section 45-6-103(a), MCA, by eliminating the word, "occupied." He stated that there are differing opinions as to the definition of an occupied structure even though it is defined in state law. He continued to point out the specific changes and gave examples to defend the proposed changes. He illustrated the need for the changes to further sections in the current law. He stated that input was sought for this proposed legislation from the State Fire Convention and Investigation Bureau of the state Attorney General's Office and the Yellowstone County Attorney's office.

John Connor, Attorney General's Office and Department of Justice, appeared on behalf of this bill. He echoed the comments of the previous witnesses to the effect that the statute, as it is currently constructed, does not allow a proper charging of arson offenses under that statute. These incidents are now charged as a crime involving a fire by criminal mischief, which carries a lesser penalty than what the arson statute carries and also doesn't permit proper tracking of the actual crime as committed. He stated that the state now has a dog trained to detect arson-related fires which makes it easier to determine origin of these crimes.

Tim Bergstrom, Montana State Firemen's Association, stated that the organization would like to go on record as supporting HB 46.

Opponents' Testimony:

None.

Informational Testimony:

None

Questions From Committee Members and Responses:

REP. LOREN SOFT stated that this bill doesn't talk about treatment of juveniles or adolescents who would fall under this bill. He wanted to know if it is better covered under another bill. He questioned what happens to adolescents or juveniles charged with the crime of arson.

REP. SIMON deferred the question.

Mr. Connor answered that juveniles are charged as delinquent when they commit an offense that, if committed by an adult, constitutes a felony. So if the juvenile were to commit an act that would be by definition of this bill a crime of arson, that juvenile would be charged as a delinquent youth. The petition would say that the youth committed an act that, if committed by an adult, would be the crime of arson. In terms of punishment, the youth cannot be placed in an adult correctional facility, the most that could be done would be that the youth would either be put on probation or put into a youth treatment facility.

REP. DEB KOTTEL asked that since arson is a felony and a person can be convicted of a felony for the destruction of property of value less than \$500, is it not inconsistent to charge someone with a felony for the destruction of property when if that person had stolen that property that was valued at less than \$500, the person could only be charged with a misdemeanor. She clarified this statement about "or other property" as including property valued under \$500.

Mr. Connor stated that it is true that a person can be charged with a felony for the crime of arson no matter the value of the property destroyed if that was done purposely or knowingly.

REP. KOTTEL said that if a person purposely and knowingly stole an item of less than \$500, that person could only be charged with a misdemeanor. She wondered if it is appropriate to have a felony charge for the arson destruction of property that is valued less than \$500.

Mr. Connor stated that there isn't any dollar value in the statute now, never has been, and suspects that the reason is the potential danger involved in the utilization of fire to commit a crime. It is likely that historically testimony could be found that the crime of arson is potentially dangerous and life-threatening, making the dollar value less significant as the means by which the crime is committed.

REP. WILLIAM BOHARSKI stated that having worked with county attorneys closely, he wanted to know what kind of addition to the work load could be expected.

Mr. Connor stated that he doesn't think it would mean a significant difference in the work load of county attorneys. He stated that they need to be made better aware of how to approach the prosecution of arson. Most of these crimes are now being charged as criminal mischief offenses anyhow.

REP. BRAD MOLNAR asked what the punishment is for criminal mischief.

Mr. Connor replied that it is 10 years and \$50,000.

REP. MOLNAR stated that he understood that all this bill would do for the burning of a pasture, for instance, is change the punishment by increasing it by 10 years.

Mr. Connor replied that that would be one of the effects.

REP. JOAN HURDLE asked if there would be some problem getting a sentence for this kind of crime since "mandatory prison" is written into the law.

Mr. Connor stated that although the statute reads, "shall be imprisoned," in fact that isn't a mandatory sentence. The court has the discretion to sentence that person to up to 20 years or anything less than that including probation. This is not a statute which requires a mandatory minimum sentence.

REP. HURDLE stated that it does require prison.

Mr. Connor stated that it doesn't require prison, but gives the court the discretion to do that if the circumstances justify it as far as the judge is concerned.

Closing by Sponsor:

REP. SIMON said that sometimes we look at these things as simple fires, but a simple dumpster fire in downtown Billings turned into a million dollar loss of a furniture store. The crime of arson is serious and this bill is proposed to allow the change in the statute where probably many assumed it already was; i.e., when someone else's property is burned, that is the crime of arson or when personal property is burned for the purposes of gaining financially, that would be also the crime of arson.

CHAIRMAN CLARK closed the hearing on HB 46

HEARING ON HB 26

Opening Statement by Sponsor:

REP. DIANA E. WYATT, HD 43, Great Falls, said this bill came out of a joint study commission of the House and the Senate during the interim to discover and investigate insurance and medical malpractice claims and what is happening in Montana in reference to them. This was a unanimous proposal from that committee in terms of insurance issues. The act revises the Montana Medical-Legal Panel requiring that, upon request, the panel articulate reasoning and basis for their decision requiring mandatory non-binding mediation for an affirmative panel decision.

Proponents' Testimony:

Mike Craig, Planning and Research Director, Health Care Authority, stated that the enabling act, SB 285, that created the Health Care Authority had a similar directive to the Senate Joint Resolution that created the sub-committee to embark on this study. This is felt to be noncontroversial in the area of agreement and the sub-committee was commended for its hard work and their investigation into this.

Russell Hill, Montana Trial Lawyers Association, called attention to the written testimony which is attached. He stated that the bill represents a unique consensus as the Montana Medical-Legal Panel and the Montana Medical Association both support this bill.
EXHIBIT 1

Brian Zins, Director of the Montana Medical-Legal Panel, stated that the panel does support this as good legislation and will help move the claims before the panel along much better.

Jerry Loendorf, Montana Medical Association (MMA), wanted to say that the MMA supports the bill. The function of the Medical-Legal Panel, when it was established in 1977, was to attempt to eliminate frivolous claims quickly and to dispose quickly of claims that were meritorious. It does this by gathering all the information immediately, particularly all the medical records, and to make those available to the parties and the experts who

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 1/3/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓ late	✓	
Rep. Ellen Bergman	✓ late	✓	
Rep. Bill Boharski	✓ late	✓	
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓ late	✓	
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY

COMMITTEE

DATE 01-03-95

BILL NO. 46

SPONSOR(S) REP. SIMON

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
JOHN CONNOR	DEPT OF JUSTICE	✓	
Tim BERGSTROM	MT. STATE FIREMEN'S ASSOC	✓	
LONNIE LARSON	Billings Fire	✓	
Jacqueline Denmark	Am. Insurance Assoc	✓	
Paul Gember	Billings Fire Dept	✓	
Charles R. Brooks	Yellow County	✓	
Bruce Suckman	State Fire Marshal	✓	
Pat Clinch	MT State Council Firefighters	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

wp:visbcom.man

CS-14

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on January 10, 1995, at
8:00 AM

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: None

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 60, HB 74, HB 93
Executive Action: HB 46 TABLED

offenders" because of their low intelligence. There was no other place to put them or treat them so that they would not be preyed upon if placed in the prison system. He also agreed that there must be a plan for the youthful offender with normal intelligence.

CHAIRMAN CLARK said the committee would hold off on Executive Action until there is a fiscal note to go with the bill.

EXECUTIVE ACTION ON HB 46

Motion: REP. BILL TASH MOVED THAT HB 46 DO PASS.

Discussion: REP. KOTTEL presented an amendment to HB 46. EXHIBIT 13

Motion: REP. KOTTEL MOVED THE ADOPTION OF THE AMENDMENT.

Discussion: REP. MC GEE asked REP. KOTTEL to read how the line would then read with the amendment.

REP. KOTTEL first explained that her reasons for this amendment are based on her understanding that arson is limited to occupied structures. She felt that the bill went too far in the other extreme by including not only all other real property, but also included all other property, both tangible and intangible personal property. She is concerned that under Montana law, a person could convert personal property worth a dollar and only be convicted of a misdemeanor; but if a person chose to burn someone's personal property valued at only a few dollars, even inadvertently, that person could be convicted of a felony. The penalty for a conversion ought to be related to the value of the property converted, so that there is a parallel nature in the criminal code. Therefore, her amendment would provide that if a structure, a vehicle, crops, pasture, forests or other real property of any value are burned, the charge would be arson with a conviction of a felony. On the other hand, other personal property would have to be valued over \$500 for it to be arson requiring a felony conviction.

REP. MC GEE said that in his opinion, in the case of someone who purposefully destroys property, no matter the value, it is criminal in nature.

REP. KOTTEL agreed that it is a crime, but thinks that it is the crime of criminal mischief or crime of conversion. She cited a hypothetical example involving a domestic disagreement where one party destroys a bundle of clothing valued at \$25 and asked if that should be subject to a felony offense of arson even though it was done knowingly and in anger. She said she is trying to protect the abuse of this law in cases such as this by narrowing the language by means of her amendment.

REP. ANDERSON said that as it is now, a fairly clear and concise criminal code exists in terms of property offenses. All of those have the distinction between misdemeanor and felony. Although he agrees that if a crime is committed, punishment should follow, he thinks that passing this without the dollar limit will confuse the criminal code and be inconsistent.

REP. ELLEN BERGMAN asked if the sponsor had approved the amendment.

REP. KOTTEL said that she did not know though she had provided him with a copy of the amendment and he had not contacted her.

REP. ANDERSON said that he had talked with John Connor who did not think there was any problem with putting a \$500 threshold on this.

REP. MOLNAR said that he likes the amendment because it goes to the bill itself. He said that if a felony trial is run on each and every act that includes fire, the county attorneys will opt to not prosecute. Without this amendment the criminal mischief label on this will be eliminated.

Vote: Motion to adopt the amendment carried by unanimous voice vote.

Motion: REP. BILL TASH MOVED THAT HB 46 DO PASS AS AMENDED.

Discussion: REP. MOLNAR said that currently per testimony, any of the things that would become arson as opposed to criminal mischief are currently punished at 10 years or \$50,000. The frustration of the fire marshals who testified as well as of the sponsor of the bill is not with the fact that these things are not punishable, but that when they get to court, the judge doesn't give them 10 years anyway. To make this a 20-year sentence won't add one more day of jail. He went on record against the bill because it will not accomplish anything.

CHAIRMAN CLARK pointed out that the sentence is not a mandatory 20 years. The judge has the discretion to go from a year up to 20 years.

REP. MOLNAR said that he understood that, but stated that in the testimony, frustration was expressed that once apprehended, the person does not get a very long sentence.

{Tape: 2; Side: A; Approx. Counter: 36.9}

REP. SMITH cited a case of arson near Ovando which destroyed a large amount acreage and asked if there are other statutes in existence now to cover that type of arson.

REP. TASH said he believed there are statutes where the perpetrator is liable for those damages especially if it is

determined that he or she did set the fire even negligently.

REP. ANDERSON said that in place already is the criminal mischief statute which is divided between misdemeanor and felony and that in a situation like that, unless an occupied structure were involved, it would be prosecuted under the criminal mischief statute. There are probably provisions for restitution and a number of other things. In addressing the bill, he agreed with REP. MOLNAR that the passage of this bill would do nothing except to give an opportunity to get more federal money for the investigation and that it is an unnecessary and redundant bill that muddies the code although it is well-intentioned.

Vote: Motion to pass HB 46 as amended failed by a vote of 16-3, REPS. WYATT, TASH AND MC CULLOCH voting yea.

Vote/Motion: REP. MOLNAR MOVED TO TABLE HB 46. Motion carried unanimously.

REP. MC GEE MOVED TO ADJOURN.

{Comments: These minutes are complete on two 90-minute tapes.}

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 1/16/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓late	✓	
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

EXHIBIT 13
DATE 1/10/95
HB 46

Amendments to House Bill No. 46
First Reading Copy

Requested by Rep. Kottell
For the Committee on the Judiciary

Prepared by John MacMaster
January 5, 1995

1. Title, line 4.
Strike: "ALL"

2. Title, line 5.
Following: the first "PROPERTY"
Insert: "NOT CURRENTLY INCLUDED"
Following: "AND"
Insert: "TO INCLUDE"

3. Title, line 6.
Following: "DECEPTION;"
Insert: "PROVIDING THAT ONLY PERSONAL PROPERTY, EXCEPT A VEHICLE,
THAT EXCEEDS \$500 IN VALUE MAY BE THE SUBJECT OF ARSON;"

4. Page 1, line 13.
Following: "vehicle,"
Insert: "personal property (other than a vehicle) that exceeds
\$500 in value,"
Following: "other"
Insert: "real"

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on January 24, 1995, at
8:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: NONE

Members Absent: NONE

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 174, HB 175, HB 176, HB 179
Executive Action: HB 46 DO PASS AS AMENDED
HB 161 DO PASS AS AMENDED
HB 174 DO PASS
HB 175 DO PASS
HB 93 POSTPONE ACTION

REP. KOTTEL felt that video screen was a more generic and broader term.

REP. MC CULLOCH was not sure a court system would understand video screen being the same as a computer screen.

REP. SOFT said he felt it would not hurt to leave the word, "computer," in for clarification. REP. SOFT MOVED A SUBSTITUTE MOTION TO REINSERT THE WORD, "COMPUTER."

REP. MC GEE suggested a friendly amendment adding the word, "other," before video screen. EXHIBIT 6 reflects the changed amendment.

Vote: The motion carried unanimously by voice vote.

Motion/Vote: REP. SOFT MOVED HB 161 DO PASS AS AMENDED. The motion carried, 18 - 0.

EXECUTIVE ACTION ON HB 46

Motion: REP. SOFT MOVED TO RECONSIDER ACTION ON HB 46.

Discussion: REP. BOHARSKI asked for an explanation of the reasons.

REP. SOFT explained that since the time the bill was tabled additional information had been received from the proponents so that arsonists could be charged as felons as well as to be able to track them across the state.

{Tape: 2; Side: B; Approx. Counter: 15.7}

Vote: The motion carried, 16 - 2, REPS. TREXLER AND BERGMAN voting no.

Motion: REP. SOFT MOVED HB 46 DO PASS.

Discussion: REP. MC GEE felt this bill was important in that it defines this activity in a criminal format that is different from criminal mischief. He felt that burning something with the intent to do harm should be defined as arson.

REP. KOTTEL said there were three reasons the committee should reconsider and pass the bill. One has to do with truth in sentencing and truth in labeling a crime. Labeling it as arson allows bringing in a fire marshall for investigative purposes, a second reason is that arson is a trackable offense, in that they can follow offenders who often commit subsequent acts of an escalated nature, and the third reason is that it allows recovery of arson damages.

REP. GRIMES said he would support the bill as well for the reasons just stated.

REP. TREXLER asked for clarification how much more was being added to the items which qualify for an arson charge.

REP. KOTTEL said that by deleting the word, "occupied," the definition is expanded.

REP. BOHARSKI said they had also added new language pertaining to the property of another.

REP. CAREY clarified that the bill was amended.

REP. MC GEE said that the amendment had been passed in previous executive action.

Motion: REP. HURDLE MOVED TO AMEND TO SAY, "SHALL BE SENTENCED FOR A TERM" AND STRIKE, "IMPRISONED IN THE STATE PRISON."

REP. MC GEE spoke against the amendment because the wording of the bill is consistent with other sections of statute as well as the fact there is nowhere else to put them.

REP. GRIMES asked Mr. MacMaster for his opinion.

Mr. MacMaster explained why it would be theoretically right to say, "shall be incarcerated for a term not to exceed...." and he recommended that they leave it as it is.

REP. HURDLE withdrew her amendment.

REP. ANDERSON said he remained unconvinced that they were accomplishing much with the bill and explained his reasons for voting against the bill.

REP. MOLNAR covered his reasons for not supporting the bill as it related to how it would affect juveniles who had burned structures and other material objects. He felt it was a local problem brought by the proponents and that its passage would not change anything substantively.

CHAIRMAN CLARK did not believe that juveniles were discussed under this bill.

REP. MOLNAR said that from page 14 on, they can be treated as adults.

REP. KOTTEL responded with an explanation of definitions of occupied structures and read portions of the present arson code. She also quoted from a document submitted by the proponents as evidence for reconsideration of the bill. EXHIBIT 6 She concluded that HB 46 is not redundant and does not financially benefit arson investigation agencies.

{Tape: 2; Side: B; Approx. Counter: 39.0}

REP. ANDERSON rebutted the arguments for the bill. He asked if REP. KOTTEL said, "you can't seek restitution for criminal mischief."

REP. KOTTEL replied that she didn't think they were talking about civilly, but were talking about MCA, 46-18-261, and read what that statute says. Therefore, if the bill is passed, it has to do with victim compensation or civilly compensation can be sought.

REP. ANDERSON answered, "Yes, I believe you can." He continued to rebut the arguments for the bill.

REP. GRIMES thought the committee's decision should be whether or not it is right to consider arson as a penalty for things other than occupied structures. He felt that it probably should.

REP. HURDLE added that there is a connection between emotional disturbance and arson and so tracking might become an important component.

REP. MOLNAR said that throughout the Youth Court Act and throughout various other statutes, restitution can and is demanded by judges though it is hardly ever given. He also rebutted other reasons given for supporting the bill.

CHAIRMAN CLARK commented on the possibility that was raised that the people of the 13th Judicial District are not doing their job. He suggested that the bill be passed to cause people to do their job who may not be doing so.

REP. MOLNAR replied that there is no minimum sentence imposed, the judge still has latitude and he did not believe anything would be changed.

REP. BOHARSKI did not believe the change in the arson statutes would require the county attorney to prosecute an individual who burned an "outhouse," but that they could prosecute under a lesser charge.

REP. KOTTEL said it would be discretionary with the county attorney to charge someone under the criminal mischief portion or under the arson portion.

REP. ANDERSON said that was correct and it also lends to considerable inconsistency among judicial districts.

REP. BOHARSKI asked if there is currently a statute which would deal with an individual who destroys their vehicle for the purposes of collecting on the insurance.

CHAIRMAN CLARK believed there are insurance fraud statutes which would cover it.

REP. BOHARSKI said that appears what subsection (b) is now attempting to direct.

REP. ANDERSON did not believe it covered anything that is not currently covered in statutes.

REP. KOTTEL recalled that there was an arson statute which was modeled after the "model arson law" of 1973 in Montana which included arson of various degrees. All of that language was amended out and now it is felt that those items which qualified as arson should be brought back for truth in prosecution.

REP. BOHARSKI said he was satisfied with that answer.

Vote: The motion carried 15 - 4, REPS. ANDERSON, MOLNAR, TASH and BERGMAN voting no.

Motion: REP. WYATT MOVED TO ADJOURN.

{Comments: This set of minutes is complete on two 60-minute tapes.}

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 1/24/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓ <i>late</i>		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓ <i>late</i>		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		



HOUSE STANDING COMMITTEE REPORT

January 24, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 46 (first reading copy -- white) do pass as amended.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Title, line 4.

Strike: "ALL"

2. Title, line 5.

Following: the first "PROPERTY"

Insert: "NOT CURRENTLY INCLUDED"

Following: "AND"

Insert: "TO INCLUDE"

3. Title, line 6.

Following: "DECEPTION;"

Insert: "PROVIDING THAT ONLY PERSONAL PROPERTY, EXCEPT A VEHICLE,
THAT EXCEEDS \$500 IN VALUE MAY BE THE SUBJECT OF ARSON;"

4. Page 1, line 13.

Following: "vehicle,"

Insert: "personal property (other than a vehicle) that exceeds
\$500 in value,"

Following: "other"

Insert: "real"

-END-

mm
1/24
Committee Vote:
Yes 15, No 4.

201319SC.Hbk

HB 46

- PROPOSED REVISIONS ARE NOT TOO HARSH.
SENTENCING DETERMINES DEGREE OR SEVERITY OF
CRIME OF ARSON.

MCA 45-2-101 STATES FELONY IS OFFENSE IN WHICH
SENTENCE IS DEATH OR IMPRISONMENT IN STATE PRISON
FOR MORE THAN 1 YEAR. MISDEMEANOR IS
IMPRISONMENT IN COUNTY JAIL FOR ANY TERM OR A
FINE, OR BOTH, OR IMPRISONMENT IN STATE PRISON FOR
LESS THAN 1 YEAR.

- PROPOSED LEGISLATION WOULD ADD GREATER
FLEXIBILITY IN MAKING PUNISHMENT FIT CRIME.

MCA 50-63-101 STATES ANY PERSON WHO MALICIOUSLY
SETS ANY FIRE UPON LAND IN THIS STATE, WITH INTENT
TO DESTROY PROPERTY NOT HIS OWN , SHALL BE GUILTY
OF A FELONY.

SHOULD A PERSON BE CHARGED UNDER THIS SECTION OF
STATE LAW, HE COULD RECEIVE FELONY SENTENCE FOR
SETTING GRASS FIRE, WITH NO CHANCE OF REDUCTION
TO MISDEMEANOR.

- UNDER HB 46, PERSON COULD STILL BE CHARGED WITH
CRIMINAL MISCHIEF, IF LEGAL SYSTEM DEEMED
APPROPRIATE.

EXPANDING ARSON STATUTE WOULD GIVE ADDED TOOL
FOR WORKING WITH MORE SERIOUS ARSON OFFENSES
AND HABITUAL ARSONISTS.

REALITY DOCUMENTS MOST OFFENDERS OF THE LAW
GET LESS OF A SENTENCE THAT THEY DESERVE, NOT
MORE.

HB 46

- Arson statutes were revised in 1973.
- Before 1973, Montana arson statutes were patterned after Model Arson Law.
- Serious deficiencies in Model Arson Law - Ex: Burning of an occupied or unoccupied dwelling house resulted in 20 year sentence (first degree arson). Burning of buildings other than dwellings resulted in 10 year sentence (second degree arson).

Therefore, burning an empty isolated dwelling could result in a 20 year sentence while burning a church with 500 people inside could result in a 10 year sentence.

- 1973 revisions of arson law corrected this situation. Rather than offenses being classified according to class of property destroyed, arson was classified according to criminality of offenders conduct.
- Revisions were needed; however, baby was thrown out with bath water. Now arsonist who burns unoccupied properties and does not endanger another person does not commit arson. He is a mischief maker.
- Because occupied structures were intended to be inclusive of human habitation, such items as house trailers and house boats would qualify as occupied structure but other vehicles would not.
- Livestock housing, for example, does not meet criteria of occupied structure. Consequently, arsonist could burn cattle barn, with 100 head of cattle inside, and he would be designated as "mischief maker", not arsonist.
- Above points taken from prepared notes written by Criminal law Study Commission in 1973.
- After 20 years, serious deficiencies have surfaced in current arson law which need to be corrected.
- MCA 53-1-104 states Department of Justice to be notified when arsonist is released from detainment.
- Under present law, only select portion of "actual" arsonists would qualify for notification status. Others would be "mischief makers", not requiring notification to Department of Justice.

- MCA 46-18-261 states suppression and investigation expenses for fires caused by arson can be collected from persons convicted of arson.
- Under present law, only a select portion of "actual" arsonists would be required to reimburse law enforcement and firefighting agencies for arson fires.
- Arsonists must be tracked to ensure authorities will have history of their arson activities. Serial arsonists historically begin their arson careers by starting smaller fires and escalating to larger, life threatening fires. Cycle must be interrupted at earliest possible stage.
- Republicans made a get tough on crime promise in 1994 campaigning.
- Billings Fire Department statistics: 20% - 25% of fire calls are incendiary or suspicious. 1/3 of dollar loss is incendiary or suspicious.
- This legislation is about making people accountable for crime they committed. Crime of arson must be called arson. Child molester is identified for crime of molestation. Rapist is identified for crime of rape. When someone kills, he is identified according to type of killing he was responsible for.
- HB 46 is not redundant bill. It does not financially benefit arson investigation agencies in any way.

Appendix I

Model Arson Law

Courtesy of American Insurance Association

ARSON: FIRST DEGREE

Burning of dwellings. Any person who willfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels, or procures the burning of any dwelling house, whether occupied, unoccupied or vacant, or any kitchen, shop, barn, stable, or outhouse that is parcel thereof, or belongs to or adjoining thereto, whether the property of himself or of another, shall be guilty of arson in the first degree, and upon conviction thereof be sentenced to the penitentiary for not less than two nor more than twenty years.

ARSON: SECOND DEGREE

Burning of buildings, etc., other than dwellings. Any person who willfully and maliciously sets fire to or burns or causes to be burned, or who aids, counsels or procures the burning of any building or structure of whatsoever class or character, whether the property of himself or of another, not included or described in the preceding section, shall be guilty of arson in the second degree, and upon conviction thereof, be sentenced to the penitentiary for not less than one nor more than ten years.

ARSON: THIRD DEGREE

Burning of other property. Any person who willfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels or procures the burning of any personal property of whatsoever class or character (the property being of the value of twenty-five dollars and the property of another person) shall be guilty of arson in the third degree and upon conviction thereof be sentenced to the penitentiary for not less than one nor more than three years.

ARSON: FOURTH DEGREE

Attempt to burn buildings or property. (a) Any person who willfully and maliciously attempts to set fire to or attempts to burn or aid, counsel or procure the burning of any of the buildings or property mentioned in the foregoing sections, or who commits any act preliminary thereto, or in furtherance thereof, shall be guilty of arson in the fourth degree and upon conviction thereof be sentenced to the penitentiary for not less than one nor more than two years or fined not to exceed one thousand dollars.

Definition of an attempt to burn. (b) The placing or distributing of any flammable, explosive or combustible material or substance, or any device in any building or property mentioned in the foregoing sections in an arrangement or preparation with intent to eventually willfully and maliciously set fire to or burn same, or to procure the setting fire to or burning of same shall, for the purpose of this act constitute an attempt to burn such building or property.

Burning to defraud insurer. Any person who willfully and with intent to injure or defraud the insurer sets fire to or burns or attempts to do so or who causes to be burned or who aids, counsels or procures the burning of any building, structure or personal property, of whatsoever class or character, whether the property of himself or of another, which shall at the time be insured by any person, company or corporation against loss or damage by fire, shall be guilty of a felony and upon conviction thereof, be sentenced to the penitentiary for not less than one nor more than five years.

EXHIBIT 6
DATE 1-24-95
HB 46

OCCUPIED STRUCTURE/PREMISES

Occupied Structure: This definition and the terms "premises" and "vehicle" provide a comprehensive treatment of such offenses against property as Criminal Trespass, Burglary, Criminal Mischief and Arson (MCA, 45-6-101 through 45-6-103 and 45-6-201 through 45-6-205).

These offenses are graded according to the type of structure against which the crime was committed and whether the act created a potential danger to human life. Prior law on arson included an exhaustive listing of different types of structures to allow the offense to be graded. This definition replaces that catalog. The wording for this subsection comes from but is not identical to the Model Penal Code source. Included within the definition are such items as house trailers, house boats, etc., which are not ordinarily considered to be "structures". It is important to note that the structure need not be occupied to be the subject of arson or burglary—under this definition the building need only be suitable for human habitation.

Premises: This subsection and the companion terms of "occupied structure" (MCA, 45-2-101) and "vehicle" (MCA, 45-2-101) allow for a comprehensive treatment of such crimes against property as Criminal Trespass and Burglary (MCA, 45-6-201 through 45-6-205) and Criminal Mischief and Arson (MCA, 45-6-101 through 45-6-103). These offenses are graded according to the type of structure against which the crime was committed and whether there was a potential danger to human life. This definition of "premises" includes structures suitable for occupancy to allow prosecution for the lesser included offense of Criminal Trespass when an offender has committed the crime of burglary. While this definition is taken directly from the New York source, the drafters of the new code specifically avoided adopting the New York definitions of "building" and "real property" due to differences in the substantive provisions. Since these terms have not been defined, they take on their ordinary grammatical and legal meanings.

Subsection (1)(a) which proscribes actual harm to property of another, corresponds to traditional malicious mischief. "Property of another", MCA, 45-2-101, includes both real and personal property. The subsection is intentionally broad to eliminate the need for having a number of offenses which define more specific types of behavior such as the destruction of art, literature, crops, livestock, etc. This subsection would also include forms of arson which may not fit into the more exacting requirements of the arson statute which follow. For example, if a person intentionally sets fire to a shack, to livestock housing or to any other articles which do not meet the criteria of an "occupied structure" as required in the Arson statute, MCA, 45-6-103, he may be prosecuted under subsection (1)(a) of this statute.

Subsection (3) classifies Criminal Mischief as either a felony or misdemeanor depending upon the value of the injured property. [See "Pecuniary Loss v. Value" note below.] The

Montana Code Annotated, Aug. 1993

This section, together with section 94-6-103 [now MCA, 45-6-102], Negligent Arson, is intended to completely replace the old Model Arson Law which classifies offenses in an illogical and arbitrary fashion. The burning of an empty isolated dwelling could result in a twenty (20) year sentence under R.C.M. 1947, section 94-502, while setting fire to a crowded church or theater or jail could yield only a maximum sentence of ten (10) years under R.C.M. 1947, section 94-503. Moreover, it makes little sense to treat the burning of miscellaneous personal property, whether out of malice or to defraud insurers a special category of crime apart from the risks associated from burning. To destroy a valuable painting or manuscript by burning it in a hearth or furnace cannot be distinguished criminologically from any other method of destruction.

Annotator's Note: This section on Arson is the highest offense in the hierarchy of crimes involving the destruction of property. Together with the section on Negligent Arson, this provision replaces the Model Arson Law which classified offenses according to the class of property destroyed rather than by the criminality of the offender's conduct. Under this section the prosecution must show: (1) that the offender knowingly or purposely started a fire or explosion (2) which either damaged an occupied structure or placed a person other than the actor in danger of being injured. Under the definition of occupied structure (MCA, 45-2-101), the property need not be inhabited; it need only be capable of habitation. Thus, the purposeful burning of any building in which a person conceivably could lodge would be sufficient for conviction. Since the definitions of knowingly and purposely (MCA, 45-2-101, 45-2-101) do not require initial knowledge of the final result, actual knowledge that the person injured was present in the building is not necessary. This section also covers burning of any occupied structure to defraud an insurer. Burning of an unoccupied structure with intent to defraud an insurer is punishable under MCA, 45-6-101, Criminal Mischief. Since the burning of the property must be without consent, it would be the burden of the defense to bring forth evidence raising an affirmative defense of authority to act. Together with the section on Causal Relationship Between Conduct and Result (MCA, 45-2-201), this section would be applicable to a person who purposely starts a fire on his own property in order to destroy the property of his neighbor. Attention

is directed to the other arson related offenses in this part of chapter 6 which may provide alternative or lesser included offenses for Arson.

Jury Instruction on Presumption of Accidental Fire

Montana Code Annotated, Aug. 1993

53-1-104. Release of arsonist — notification of department of justice. (1) Each of the following institutions or facilities having the charge or custody of a person convicted of arson or of a person acquitted of arson on the ground of mental disease or defect shall give written notification to the department of justice whenever the person is admitted or released by it:

- (a) Montana state hospital;
- (b) state prison;
- (c) Mountain View school;
- (d) Pine Hills school; or
- (e) any county or city detention facility.

(2) The notification must disclose:

- (a) the name of the person;
- (b) where the person is or will be located; and
- (c) the type of fire the person was involved in.

Negligent arson, 45-6-102.

Arson, 45-6-103.

EXHIBIT: 6

DATE 1-24-95

HB 46

Montana Code Annotated, Aug. 1993

RELEASE OF ARSONISTS-PENALTY-DEFINITIONS

46-18-261. Recovery of suppression and investigation expenses for fires caused by arson. (1) A person convicted of arson, negligent arson, or solicitation of or conspiracy to commit arson or negligent arson may be ordered, as part of the sentence, to reimburse law enforcement and firefighting agencies for the cost of suppressing and investigating a fire that occurred during the commission of the crime.

(2) The court may order a person doing a presentence investigation and report to include documentation of the costs of suppressing and investigating the fire and of the defendant's ability to pay and may receive evidence concerning the matters at the time of sentencing.

(3) The court shall specify the amount, method, and time of payment, which may include but is not limited to installment payments. The court may order a probation officer or other appropriate officer attached to or working closely with the court in the administration of justice to supervise payment and report any default to the court.

(4) Upon petition by the offender and after a hearing, the payment may be modified. Agencies receiving payment at that time must be notified of and allowed to participate in the hearing.

(5) This section does not limit the right of a law enforcement or firefighting agency to recover from the offender in a civil action, but the findings in the sentencing hearing and the fact that payment of costs was part of the sentence are inadmissible in and have no legal effect on the merits of a civil action. Costs paid by the offender must be deducted from a recovery awarded in a civil action.

50-63-102. Penalty for setting or leaving fire causing damage. (1)
Any person who shall upon any land within this state set or leave any fire that shall spread and damage or destroy property of any kind not his own shall upon conviction be punished by a fine of not less than \$10 or more than \$500. If such fire be set maliciously, whether on his own or on another's land, with intent to destroy property not his own, he shall be guilty of a felony and shall be punished by imprisonment in the state penitentiary for not less than 1 or more than 50 years.

(2) During the closed season, any person who shall kindle a campfire on land not his own in or dangerously near any forest material and leave same unquenched or who shall be a party thereto or who shall by throwing away any lighted cigar, cigarette, matches, or by the use of firearms or in any other manner start a fire in forest material not his own and leave same unquenched shall, upon conviction, be fined not less than \$10 or more than \$100 or be imprisoned in the county jail not exceeding 60 days.

Montana Code Annotated, Aug. 1993

(21) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding 1 year.

(36) "Misdemeanor" means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term or a fine, or both, or in which the sentence imposed is imprisonment in the state prison for any term of 1 year or less.

(40) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

RECOVERY OF SUPPRESSION AND INVESTIGATION COSTS



YELLOWSTONE COUNTY ATTORNEY

217 North 27th Street
P.O. Box 35025
Billings, MT 59107-5025
(406) 256-2870
(406) 256-6931 - Fax

EXHIBIT 6
DATE 1-24-95
HB 46

Dennis Paxinos
Deputy Yellowstone County Attorney

January 12, 1995

Representative Shiell Anderson
Montana State Capital Station
Helena, Montana 59620

VIA FAX 900-225-1600
FOLLOWED BY U.S. MAIL

Dear Representative Anderson:

It is my understanding that House Bill 46 introduced by Bruce Simon has been tabled. I would appreciate it if you would reconsider your vote to table and move it back out to the committee for discussion. This bill was drafted by Fire Department Officials in cooperation with this office to combat what we perceive to be huge loop holes within the criminal law statutes. As a prosecutor I can tell you it is damn difficult to get an arsonist labeled as such and prosecuted as such. Too often times we are limited to charging somebody with a burglary or a criminal mischief violation when what they really committed was arson. The arsonist is a criminal who all too frequently continues to escalate his destructiveness because of his ever increasing fascination with fire. As a prosecutor I would like to have the discretion to charge a person who burns cars in the courthouse parking lot as an arsonist not as a mischief maker! If convicted of arson, this defendant has to report to every community he goes to that he is an arsonist. Also because arson carries a 20 year term I can keep the convicted arsonist under a probationary sentence for a longer period of time then I can with the person charged with criminal mischief.

Please reconsider your vote tabling this matter and move to have this bill reheard. I would be happy to be present to give testimony from a prosecutor's point of view. Thank you for your time and consideration.

Very truly yours,

Dennis Paxinos
Yellowstone County Attorney

DP/hp

cc: Paul Gerber, City Fire Marshal
Representative Bruce Simon



CITY OF BILLINGS

BILLINGS FIRE DEPARTMENT
LORREN L. BALLARD
FIRE CHIEF

2305 8th Avenue North
Billings, Montana 59101
(406) 657-8423

January 12, 1995

Honorable Governor Racicot

Governor Racicot:

I have been involved in the rewriting of the current arson statute. This bill is currently House Bill 46, introduced by Representative Bruce Simon.

As you are aware arson is an extremely difficult crime to prove in a court of law. It is extremely important that those persons responsible for the burning of property be charged and tracked for this violent crime.

The main forces behind tabling this bill were Representative Shiell Anderson, Representative Brad Molnar and Representative Deb Kottel from the House Judiciary Committee.

It is my understanding after hearing your State of the State speech that you support the idea of getting tough on crime. I feel that this bill fits your agenda.

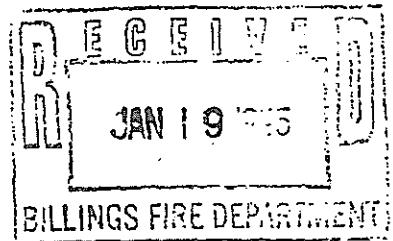
If there is anyway that you could or would look into reviving this bill I would appreciate the help.

Thank you,

Lonnie Larson
Deputy City Fire Marshal
406-657-8425

Paul Gerber
City Fire Marshal
406-657-8422

OFFICE OF THE GOVERNOR
STATE OF MONTANA



MARC RACICOT
GOVERNOR



STATE CAPITOL
HELENA, MONTANA 59620-0801

EXHIBIT 6
DATE 1-24-95
HB 46

January 18, 1995

Lonnie Larson
Deputy City Fire Marshall
City of Billings
2305 8th Avenue North
Billings MT 59101

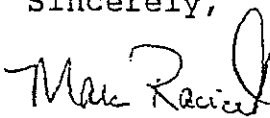
Dear Lonnie:

Thank you for your comments on House Bill 46. Your thoughts are important and will most certainly be kept in mind as we review that proposed legislation and discuss it with legislators.

I would also advise, in the event you have not already done so, to make contact with your local legislators and provide them with your insights concerning HB 46.

Thank you for your advice and counsel.

Sincerely,


MARC RACICOT
Governor

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE D. CRIPPEN, on March 1, 1995,
at 10:00 am

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 46, HB 69, HB 177, HB 179
Executive Action: None.

HEARING ON HB 46

Opening Statement by Sponsor:

REPRESENTATIVE BRUCE SIMON, House District 18, Billings,
presented HB 46. This bill expands the crime of arson. If a
person poured gasoline on a car and then set it on fire, he would
not be committing an act of arson. If a person set a haystack on
fire and burned a crop, he would not be guilty of arson. He
would be guilty of criminal mischief. This bill will broaden the
act to include burning of other people's property or burning your
own property for the purposes of receiving ill-received gains

through insurance to be included in the act of arson. Currently, you are guilty of arson only if you burn an occupied structure. It certainly makes a big difference to law enforcement. He commented on several newspaper articles. One was a fire behind an IGA store which nearly cost the owner the store. Another article was about a pickup which was burned while parked on the streets of Billings. This was not arson. The last article referred to a teenage gang which was responsible for many things including an arson fire. They pled guilty to burglary, robbery and criminal mischief. There is a big difference between mischief and arson. A fire which was set at a dumpster in Billings cost a million dollars in damage to a furniture store. Law enforcement has asked that the statute be changed so they can treat these people as arsonists.

Proponents' Testimony:

John Connor, Department of Justice, spoke in support of HB 46. This is a simple bill which tries to expand the definition of arson so that it covers crimes committed by fire. Criminal mischief has a more limited penalty than arson. Arson is potentially more dangerous. In the view of many it is a crime of violence because it runs the risk of harm or injury to individuals. In Montana, crimes are not tracked by the fact of the crime but rather by the definition of the offense to which the defendant pleads guilty. If the defendant pleads guilty to criminal mischief, there is no way to know whether the defendant committed arson unless you look at the investigative file.

Lonnie Larson, Billings Fire Marshall's Office, spoke in support of HB 46. One of his responsibilities is to investigate the origin and cause of fires. They had an individual set five fires one night. Out of these five fires, they could only try him for arson relating to one fire because there was an individual in a car adjacent to one of the cars which he set on fire.

Paul Gerber, Billings Fire Marshall, commented that the Billings Fire Department responded to 700 fires in 1994. Approximately 25% of these incidents were incendiary or suspicious fires. Over 1/3 of the dollar loss in 1994 was attributed to incendiary or suspicious fires. Fire investigation is a complex science. In many cases they believe they know who started the fire. Arson cases are difficult to prosecute because much of the case is built upon circumstantial evidence. The crime of arson takes more money out of our communities than any other crime in Montana. Current Montana law presents obstacles for the effective prosecution of arson. HB 46 would correct these legal deficiencies. Input to this legislation was provided by the State Fire Prevention and Investigation Bureau, the State Attorney General's Office, and the Yellowstone County Attorney's Office. Last year there were several boarded up buildings which were set on fire. They were very dangerous for the firefighters to fight and were very taxing upon the Department's resources. Under current legislation, burning these buildings is not arson.

Last summer someone set fire to over 200 residential plastic dumpsters. This individual not only caused the dumpsters, valued at \$200 apiece, to burn but also set on fire fences, hedges, etc. This would not be arson under current law. HB 46 would make the arsonist accountable for the nature of the crime he has committed.

James Lofftos, President Montana Fire Districts Association, stated they stand in support of HB 46. Every time one of their firetrucks leaves to fight a fire they are not only putting their lives in danger by responding to a code 3, red lights and sirens, but they are putting other people's lives in hazard too. The firefighters are put at risk fighting the fire. A lot of these people are volunteers who should not be put at risk to fight an arson fire. There are far too many arson fires in the state of Montana.

Kathy McGowan, Montana Sheriffs and Peace Officers Association, spoke in support of HB 46.

Randy Vogel, Billings Police Officer, commented this bill will give some assistance to law enforcement to call an arsonist just what he is, an arsonist. This does not mean a rancher burning ditches because intent is needed. This does not mean a young child playing with matches because you have to knowingly and purposefully commit the act. People who commit terrorists acts for monetary gain are arsonists.

Tim Bergstrom, Montana State Fireman's Association, spoke in support of HB 46.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

SENATOR SUE BARTLETT commented her concern is with a bill which recently passed that makes anyone convicted of the crime of arson three separate times, subject to life imprisonment without possibility of parole. The changes here would include in arson, "damaging by fire any vehicle of any value or no value and personal property which exceeds \$500 in value." If a person was found guilty three times under this statute, they would be in prison for life. She asked if he felt the crime of arson should include all of the potential types of arson proposed in HB 46.

Mr. Gerber commented that the definition of arson needs to be expanded. He spent 22 years in fire service. He has a hard time understanding why we have trouble with this crime. If a person robs a bank and takes \$1000, every law enforcement officer in the area would go after that person. That person could get into a \$15,000 car and torched the car, the only person involved would be one fire investigator. We lose millions of dollars and

thousands of people die because of arson fires. It is a serious offense. A person who burns a dumpster today will be burning buildings with a few years.

SENATOR BARTLETT commented that burning of boarded-up buildings posed very dangerous situations to firefighters. She stated the existing crime of arson includes fire which places another person in danger of death or bodily injury including a firefighter responding to or at the scene of that fire. Was their county attorney reluctant to charge arson in those instances?

Mr. Gerber commented they had extensive conversations about the situation. He was involved with an arson fire. A stairwell fell through on him and his partner. The county attorney stated that a stairwell falling through on him did not prove that he was endangered. Endangerment is hard to prove until the wall falls in on a firefighter.

CHAIRMAN BRUCE CRIPPEN asked if they had considered using different degrees of arson?

Mr. Gerber commented his research showed that prior to 1973 we had the model arson law in Montana which went by degrees. This was changed in 1973 because the Montana Criminal Law Study Commission felt that we needed to have the crime of arson fit the criminality of the offense. The recommendation from the Legislative Council was not to get back to degrees of arson because the state statutes are not designed around degrees. It would not be consistent with current law. First degree arson would carry a penalty of 20 years. If a person then burnt another occupied structure, the person would then have a 10 year sentence. A church with 300 people in it would be a second degree arson as compared to an uninhabited house for first degree arson. If a person is sentenced to the state prison for more than a year, it is a felony. If he is sentenced to less than a year in state prison, it is a misdemeanor. Sentencing has a lot to do with the felony. This bill will change the labeling and have the crime classified to what has occurred. Under arson, the Department would have notification which would provide for them to be notified when an arsonist is out of prison and returns to their town. If the case is arson, the city can recover some of the cost. They cannot under criminal mischief.

CHAIRMAN CRIPPEN stated the three strikes and you are out proposal would be under 103, which is being amended under this bill. He asked **John Connor** if he saw any problems with this.

Mr. Connor commented that there was some discussion regarding this in the House. The committee felt that when talking about personal property it had to exceed \$500 in value. There is not an offense of malicious mischief. There is criminal mischief. If the property exceeds a value in excess of \$500, it is a felony. If it involves a commonly domesticated hoofed animal, it is a felony. If the offense is less than that, it is misdemeanor

criminal mischief. If an 18 year old sets fire on two occasions under the influence of alcohol to something of a minor value, and then does something similar a third time there is still the option of charging some of those offenses as criminal mischief if you do not want that person faced with a life term. If it doesn't seem appropriate to send this person away for life, there are charging options available. The concern of the fire marshall is that the crime of arson is potentially dangerous to life. That is what sets this apart from criminal mischief.

Closing by Sponsor:

REPRESENTATIVE SIMON commented that charging someone with arson and proving the act of arson is a very difficult process. To be able to charge someone with arson three different times and prove it in a court of law three different times is going to be a very difficult process. The court would have the option of charging these offenders with criminal mischief.

HEARING ON HB 69

Opening Statement by Sponsor:

REPRESENTATIVE MARJORIE FISHER, House District 80, Whitefish, presented HB 69, the victim's rights bill. This bill will give victims access to information, names and phone numbers of the prosecutor and investigating officer, the crime charge, the date, the time and location of the proceedings, the appeal or postconviction proceedings by the offender and the release, escape, parole or pardon of the offender. It will give consideration to the victim's interest. It will recognize rights of the victim and restoration of their loss as part of the correctional policy of the State of Montana. It will clarify that victim impact statements must be allowed by the sentencing judge at the time of sentencing; by the sentencing judge in death penalty sentencings; by the parole board when considering an offender's parole eligibility and by the court or parole board when considering an offender's request to reduce or waive restitution. It requires consideration of the protection of the victim by the courts when imposing restrictions on the offender and by the court before allowing a sex offender who assaulted a child to be treated in a community setting. It will require that restitution be imposed as a condition of any sentence. It will allow restitution to be satisfied by forfeiture of the offender's assets, return of property to the victim, payment of 1/3 of prison earnings and services provided to the victim or other designated person with the victim's consent. It will also provide lifetime restitution. It will increase some compensation to the victim's funeral benefits to \$3500 and secondary victim for mental health treatment to \$2000.

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SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB69 ; HB46 ; HB179 ;
HB177

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Check One

Name	Representing	Bill No.	Support	Oppose
GENE KISER	MBCC	HB69	✓	
John Connor	Mont County Attys Assn	HB46 HB69	✓	
John Connor	" " " "	HB177 HB179	✓	
TIM OBERLOFFER	Post Council	HB 69	-	
MARIAN STEVENSON	SELF	HB 69	✓	
Sharon Stevenson	SELF	HB69	✓	
JANE BERNARD	I.C.C.W	HB69	✓	
KATHY McGOWAN	MSPOA	46, 69, 177	✓	
Matthew Cole	Friendship Cntr of Helena	HB69	✓	
Tim BERGSTROM	MT ST. FIREMENS ASSOC	HB 46	✓	
Randy Vogel	3rd Police Dept	HB 46	✓	
James Larson	Bigs Fire Dept	HB46	✓	
Paul Barber	Billings Fire	HB46	✓	
David M. Full	City of Helena	HB177		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE _____

SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: _____

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Check One

Name	Representing	Bill No.	Support	Oppose
H.A. BOAN	SUPREME COURT	HB 177		✓
JAMES A LOFFTUS	MT FIRE DIST ASSN	HB 46	✓	
Troy Mcbee	MT Police Assoc. MT Chiefs Assoc	HB 69 & 46 HB 177	✓	
Bob Gilbert	MT MAGISTRATES ASSN	HB 177		✓
Doug Harkin	District Judge	177		✓
George CORN	Rawlins County, Wyo. Attorney	177	✓	
David Hemion	Mental Health Assoc	HB 169	✓	
Sen. R. Yen	Lincoln County attorney	HB 177	✓	
Robert Anderson	DCHS / GOV OFFICE	HB 69 HB 177	✓	
Sharon Bakken	MACCM	HB 177 HB 69	✓	
JOE ROBERTS	MT. CTY. ATTY. ASSOC.	HB 177 HB 179	✓	
Wm James Kembel	City of Billings	HB 69		Funding Concern
Charles R. Brooks	Yellowstone County	HB 177	✓	
Gordon Morris	MAlo	HB 177	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE _____

SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: _____

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Check One

Name	Representing	Bill No.	Support	Oppose
Mike Mathew	Yellowstone Co.	177	☒	☐

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE CRIPPEN, on March 2, 1995, at
9:00 A.M.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Feland, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 158, HB 161, HB 250, SB 387
Executive Action: HB 135, HB 83, HB 46, HB 69, HB 177, HB
179, HB 250, HB 161

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EXECUTIVE ACTION ON HB 135

Motion: SENATOR MIKE HALLIGAN MOVED THAT HB 135 BE CONCURRED IN.

Discussion: SENATOR LARRY BAER said he had a lot of problems
with the bill, speaking mostly to government bureaucracy. He
said they would not need two attorneys, a paralegal and a
secretary. He maintained that they were not that complicated and

SENATOR HALLIGAN said he thought it was a good hearing, praising both sides of the argument. He said that the legislature had passed in 1989 the bottom of page 3, Subsection 5, that cities, towns and counties can adopt ordinances more strict than the State law. He voted for it, he said. He recognized that a statewide standard isn't something that was appropriate at the time. He said when they talked about the invasions of "big government," they had to make it mean something when they passed the law, whether it was passing morality, as in this case, or other things. He said they had already granted local control if that is what the communities wanted and they had also allowed for strong zoning laws for bookstores and adult stores. They had passed strong criminal laws dealing with sex offenders. He said he had young sons which he would have to inculcate or somehow develop their understanding of what is appropriate conduct. He said it was his responsibility and that of his wife, his family, his neighborhood and his community. He hoped the bill would stay with the 1989 law and the intention of local control. SENATOR HALLIGAN stated that the broader language with the "average person" applying contemporary standards would cause inconsistency in the application of this law and would have a chilling effect. He said he strongly agreed with local controls, but it was not appropriate with this forum. SENATOR HOLDEN stated that he comes from the largest senate district, covering five counties. He said no one talks about obscenity or abortion. He had never been asked about either in a candidate forum. But he said the people in his district knew what was right and what was wrong. It upset him that some people on the committee wanted to defend pornography and defend a person's right to take a picture of a lady chained up and call it justice. He said he would vote for the bill and the people in his district would not say a word. Local ordinances would not speak to those types of things, he said.

Vote: REVERTING TO THE ORIGINAL MOTION BY SENATOR HALLIGAN THAT HB 83 BE NOT CONCURRED IN AS AMENDED, THE MOTION CARRIED by roll call vote.

EXECUTIVE ACTION ON HB 46

Motion/Vote: SENATOR DOHERTY MOVED THAT HB 46 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY on an oral vote.

EXECUTIVE ACTION ON HB 69

Motion/Vote: SENATOR NELSON MOVED THAT HB 69 BE CONCURRED IN.

Discussion: SENATOR HOLDEN stated that he believed SENATOR GAGE would agree that this bill was superior to the one he carried. He thought they should concur on this bill.

SENATOR NELSON wanted some clarification on the bill since she was to carry it on the floor. She asked Beth Baker of the

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3-2-95

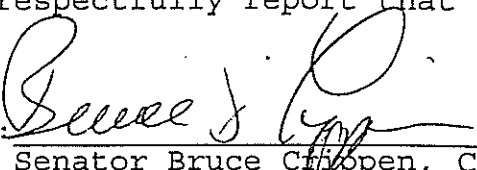
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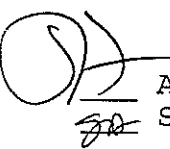
SENATE STANDING COMMITTEE REPORT

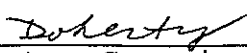
Page 1 of 1
March 2, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 46 (third reading copy -- blue), respectfully report that HB 46 be concurred in.

Signed: 
Senator Bruce Crippen, Chair


Amd. Coord.
Sec. of Senate


Senator Carrying Bill

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